

ROADS: County may establish or widen public roads in excess of thirty feet.

September 10, 1937

10-4



Mr. O. A. Kamp
Prosecuting Attorney
Montgomery County
Montgomery City, Missouri

Dear Mr. Kamp:

This acknowledges your request for an opinion under date of September 8, 1937, wherein you state as follows:

"A question has arisen on which the Highway Engineer of this county would like to have your opinion, regarding the establishment of a county road. He has been advised that a County Court cannot condemn right-of-way for a county road in excess of 30 feet in width.

I refer you to sections 7825 and 7840, Article 1, R. S. 1929, and would like to have your opinion on the following question. Can the County Court condemn private property for the establishment of a county road in excess of thirty (30) feet in width? Also would the Court have the authority to condemn property for the purpose of widening a 30 foot county road that has been heretofore established?"

Section 7825 R. S. Missouri 1929, provides as follows:

"All public roads in this state which hereafter may be established shall not be less than thirty feet in width."

The Court in the case of Watson vs. City of Salem, 164 Pac. 567, 568, 84 Ore. 666, defined the words "not less than" thus:

"The words 'not less than', like the language "at least", signify 'in the smallest or lowest degree; at the lowest estimate' * * *".

In the case of Miller vs. Rodd, 131 Atl. 482, 483, 285 Pac. 16, the Court gives this definition:

"The words 'not less than' mean 'at least'. Com. vs. Brown, 210 Pa. 29, 34, 59 Atl. 479."

Under the above section all public roads in this state hereafter established must be at least thirty feet.

Section 7840 R. S. Missouri 1929, gives the County Court authority to condemn private property for the establishment of public roads as follows:

"The right of eminent domain is vested in the several counties of the state to condemn private property for public road purpose, including any land, earth, stone, timber, rock quarries or gravel pits necessary in establishing, building, grading, repairing or draining said roads, or in building any bridges, abutments or fills thereon. If the county court be of the opinion that a public necessity exists for the establishment of a public road, or for the taking of any land or property for the purposes herein mentioned, it shall by an order of record so declare, and shall direct the county highway engineer within fifteen days thereafter to survey, mark out and describe said road, or the land or material to be taken, or both, and to prepare a map thereof, showing the location, courses and distances, and the lands across or upon which said proposed public road will run, or the area, dimensions, description and location of any other property to be taken for the purposes herein, or both, and said highway engineer shall file said map and a report of his proceedings in the premises in the office of the county clerk. Thereupon the

county court shall cause to be published in some newspaper of general circulation in the county, once each week for three consecutive weeks, a notice giving the width, beginning, termination, courses and distances and sections and subdivisions of the land over which the proposed road is to be established, or the location, area, dimensions and descriptions of any other land or property to be taken, or both, and that said land or property is sought to be taken for public use for road or bridge purposes. If within twenty days after the last day of said publication no claim for damages for the taking of any of such land or property be filed in the county clerk's office by the owner of said property, or by the guardians or curators of insane persons or minors owning said property, then the claim of any such owner shall be forever barred, and the county shall be authorized to enter upon and appropriate said lands or other property; and the court shall make an order accordingly. If any claim for damages be filed, the same shall be heard on the first day of any regular or adjourned term of the county court after the expiration of the twenty days last aforesaid. If the county court and the land or property owner be unable to agree on the amount of the damages, the county court shall make an order reciting such fact, and cause a copy of same to be delivered to the judge of the circuit court of that county, and a transcript of the record and the original files in said cause shall be transmitted by the county clerk to the circuit clerk of the county. Upon receipt of the copy of the order of the county court last aforesaid by the circuit judge, the circuit court, or the judge thereof in vacation shall make an order setting the cause for hearing within fifteen days, and if the order fixing the date of said hearing be made by the judge in vacation, it shall forthwith be filed in the office of the circuit clerk. The court or judge in vacation, shall cause to be empaneled a jury of six freeholders not interested in the matter or of kin to any member of the county court, or to any landowner in interest. Said jury shall view the land, or other property, proposed

to be taken, and shall hear the evidence and determine the question of damages under the direction of the court or judge. Five of said jury concurring may return a verdict, and in case of a disagreement another jury may be empaneled. The public necessity for taking said property shall in nowise be inquired into by the circuit court, and the judgment of the circuit court, or judge thereof in vacation, in said cause shall not be reviewed on appeal or by writ of error."

From the foregoing we are of the opinion that the County Court can condemn private property for the establishment of a private road in excess of thirty feet in width.

Section 7841 R. S. Missouri 1929, defines the word "established" as used in the article as follows:

"The words 'established' and 'establishing,' as used in this article in relation to public roads, shall be held to embrace the locating, relocating, changing or widening of roads, and the word 'road' shall include bridges and culverts."

From the foregoing we are of the opinion that the County Court is authorized to condemn property for the purpose of widening a thirty foot county road heretofore established.

Respectfully submitted,

APPROVED:

MAX WASSERMAN,
Assistant Attorney General

J. E. TAYLOR
(Acting) Attorney General

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